

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
) SS
COUNTY OF MARION)**

**WILLARD G. MOSLEY,
Complainant,**

DOCKET NO. EMra77120799

vs.

**RES MANAGEMENT CORPORATION,
Respondent.**

FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER

On December 15, 1978, John C. Carvey, in his capacity as Hearing Officer in the above cause, entered his recommendation. Neither party has filed objections to that recommendation within the ten (10) day period prescribed by IC 4-22-1-12 and Ind. Admin. R. and Reg. § (22-9-1-6) –35(A).

Being duly advised in the premises, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law, and Order those recommended in the Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Order, which is attached hereto and incorporated by reference herein.

DATED: January 19, 1979

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STATE OF INDIANA)
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WILLARD G. MOSLEY,
Complainant,

DOCKET NO. EMra77120799

vs.

RES MANAGEMENT CORPORATION,
Respondent.

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER

Comes now the Complainant, Willard G. Mosley, Jr. ("Mosley"), by counsel, and files his Motion for Default Judgment, which Motion is in words and figures as follows:

(H.I.)

And comes not the Respondent, RES Management Corporation ("RES"), in opposition thereto.

And comes now the Indiana Civil Rights Commission ("ICRC") and enters its Order defaulting RES, which Order is in words and figures as follows:

(H.I.)

And comes now the Respondent, by counsel, and files its Verified Motion to Set Aside Default Order, which Motion is in words and figures as follows:

(H.I.)

And comes now the Complainant, by counsel, and files his Objection to Motion to Set Aside Default Order, which Objection is in words and figures as follows:

(H.I.)

And comes now the Respondent, by counsel, and files its Response of Respondent to Objections of Complainant to Motion to Set Aside Default Order, which Response is in words and figures as follows:

(H.I.)

And comes now John C. Carvey, in his capacity as Chairman of ICRC, and enters his Order denying Respondent's Verified Motion to Set Aside Default Order, which Order is in words and figures as follows:

(H.I.)

And Notice of Hearing on Damages being properly served and the Chairman have appointed himself as Hearing Officer, a hearing was held on July 20, 1978 in the rooms of ICRC. Complainant was present, in person and by counsel, MR. Grant W. Hawkins. Respondent was present by counsel, Mr. John J. Sullivan. After evidence was heard from both parties, Respondent was ordered to file a brief in support of its oral Motions to Dismiss, to which Complainant was to Reply.

And comes now the Respondent, by counsel, and files its Brief of Respondent in Support of Motion to Dismiss Complaint for Lack of Subject Matter Jurisdiction, which Brief is in words and figures as follows:

(H.I.)

And comes now the Respondent, by counsel, and files its Brief in Support of Motion of Respondent for a Judgment (sic) in Its Favor on the Issue of Damages, which Brief is in words and figures as follows:

(H.I.)

And comes now the Respondent, by counsel, and files its Notice to Commission of Late Service of Pleadings (sic) to (sic) Complainant's Counsel which Notice is in words and figures as follows:

(H.I.)

And comes now the Complainant, by counsel, and files Complainant's Brief in Opposition to Respondent's Motion to Dismiss and Respondent's Motion for Judgment on the Evidence, which Brief in Opposition is in words and figures as follows:

(H.I.)

And comes now the Respondent by counsel, and files its Reply Brief in Support of Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction and Motion for a Judgment (sic) on the Evidence, which Reply Brief is in words and figures as follows:

(H.I.)

And comes now John C. Carvey, Hearing Officer, having considered all of the above motions and briefs, the evidence adduced at the Hearing of July 20, 1978, and being duly advised in the premises, and recommends the entry of the following Findings of Fact Conclusions of Law, and Order:

FINDINGS OF FACT

1. All of the proceedings and filings in the above recitation occurred in the order in which they are set out.
2. With the exception of the untimely Answer, if any Briefs or Motion were not filed in a timely manner, the opposing party has not objected to their untimeliness.
3. The complaint was filed on December 2, 1977.
4. By virtue of ICRC's Order by Default, all of the allegations in the complaint were deemed to have been admitted as true, including the following:
 - a. Mosley, a Black, applied for a position with RES at Country Place Apartments in early September of 1977.
 - b. A couple of days later, RES' management learned of the race of Mosley's fiancée, which race is white (Caucasian).
 - c. RES, on learning of Mosley's fiancée's race advised Mosley that neither her race nor his race, nor the difference therein, would present a problem.
 - d. On September 7, 1977, Mosley received a letter from RES stating that management felt it should have an Indiana State Trooper or an Indianapolis Police Officer rather than another Marion County Deputy Sheriff in the position of security guard.
 - e. Approximately a week after Mosley received the latter referred to in (d), he learned that RES had hired a white (Caucasian) Marion County Deputy Sheriff who had less seniority than Mosley did not work the district in which Country Place Apartments is located, had less "street experience" than Mosley and whose application RES was filed after Mosley's.
5. In spite of the above, evidence was introduced at the hearing by Mosley that he applied and was interviewed in late August of 1977. There is some dispute between the parties as to when Mosley knew that RES had decided not hire him. There is no need this case to resolve this dispute for reasons set out below.
6. Until Mosley learned that a white (Caucasian) Deputy Sheriff had been employed, which was not until mid-September of 1977, he only suspected that he was a victim, or at least a potential victim, of discrimination based on race.

7. Any date after September 2, 1977 is within ninety (90) days of the filing of the complaint.
8. Had Mosley been employed by RES, he would not have been paid money but would have received, at no expense to him a furnished apartment within which could have resided for as long as he was so employed.
9. At the time Mosley sought employment with RES, he was employed as a Security Guard with another apartment complex, Buckingham Apartments, under a similar arrangement as would have existed at RES.
10. Mosley did not leave his employment at Buckingham Apartments until sometime in 1978, when he purchased a home and changed his residence.
11. The rental value of the type of apartment which Mosley would have had at RES was one hundred eighty-five dollars (\$185.00) per month.
12. There was no evidence of the rental value of the type of apartment Mosley had at 3055 North Meridian Street.
13. There is no evidence that had Mosley been employed by RES, that either the fact or time of his purchase of home would have been altered.
14. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. ICRC had jurisdiction over the subject matter and the parties.
2. A complaint need not be filed within ninety (90) days from the date Complainant suspects unlawful discrimination but only needs to be filed within ninety (90) days from the date Complainant has some reasonably concrete knowledge that the suspected unlawful act was in fact unlawful.
3. Mosley proved that he was the victim of "...the exclusion of a person from equal opportunities because of race...", IC 22-9-3(1), by proving that (a) he was a Negro; (b) he applied for and was qualified for a position; (c) a position for which

he applied was vacant; (d) the reason offered by Respondent for not hiring Mosley, that it should hire an Indiana State Trooper or an Indianapolis Police Officer, was a pretext for unlawful racial discrimination.

4. A reason offered by an employer for rejecting a black applicant for employment is proven to be pretext when, as here, the white applicant ultimately hired is proven to have been similarly situated in that respect.
5. Even if it were concluded that the compensation herein involved were "wages, salary, or commission" to which the ICRC's authority to award monetary damages is limited in employment cases by IC 22-9-1-6(k) (1), Mosley has not proven that he received less compensation that he would have received has he been employed by RES.
6. Any finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. RES shall cease and desist from denying equal opportunity because of race to black applicants for employment.

SIGNED: December 15, 1978